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C O N F I D E N T I A L SECTION 01 OF 02 TEGUCIGALPA 001832

SIPDIS

STATE FOR EB/CBA, EB/IFD, WHA/EPSC, L/CID, AND WHA/CEN
COMMERCE FOR MSIELGELMAN
GUATEMALA FOR COMATT: MLARSEN
STATE PASS USTR

E.O. 12958: DECL: 09/05/2015

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SUBJECT: ANHEUSER BUSCH BEING SUED FOR USD 5.5 MILLION FOR
BREACH OF A CONTRACT THEY CLAIM DOES NOT EXIST

REF: (A) TEGUCIGALPA 1324

Classified By: Classified by EconChief PDunn for Reasons 1.5(e)

11. (C) Summary: Anheuser Busch (AB) is defending itself from a charge of breaching a distribution contract that they claim was canceled over a year ago. Despite cancellation of its contract, and under what AB lawyer consider suspicious circumstances, local brewer Cerveceria Hondurena got a license from the GOH as sole distributor of AB products. It then allegedly used that license to sue AB for damages. AB is challenging both the factual and procedural bases of the suit in court, but has privately indicated it would prefer to settle the case and would welcome either arbitration or mediation from the GOH Minister of Industry. End Summary

12. (SBU) On August 22, Anheuser Busch (AB) representative Juan Cintron briefed CDA, ADCM, and EconChief on the status of a pending USD 5.5 million lawsuit filed in Honduras by Cerveceria Hondurena (CH) for breach of contract. In the suit, CH alleges AB breached a contract giving CH distribution rights for AB products in Honduras. AB has countered that the contract had been canceled and therefore could not have been breached.

13. (SBU) According to AB, subsequent to AB's cancellation of the CH contract and under what AB lawyers consider suspicious circumstances, CH was granted a license as Honduran distributor for AB products. CH then used that license and their allegation that the previous contract was still binding to file suit against AB for damages. Under Honduran law, because AB is a foreign firm, CH was required to take their case to arbitration. CH did not do so, and AB is challenging that procedural failure, as well as responding to CH's specific allegations.

14. (C) AB is not currently seeking Post assistance, preferring to see if the evidence submitted in the pending appeal is sufficient to void the case. However, AB lawyers note that civil cases (since they are conducted entirely on paper, rather than in oral hearings) can drag on for several years, and the final judgment will include both damages and all legal costs incurred. In addition, AB feels such a lawsuit would send a strongly negative signal to potential investors or firms seeking distributors in Honduras, particularly when the ink on the new Central American Free Trade Agreement is not yet dry. For these reasons, from a legal perspective, AB would prefer to move the case to arbitration, where they believe it should have gone in the first place.

15. (C) From a purely business perspective, AB would prefer an out-of-court or out-of-arbitration settlement of the matter. From AB's point of view, it is not worth the effort, expense, and potential ill-will to fight a protracted legal battle over USD 5 million. Asked if AB is pursuing such a settlement, Cintron indicated he was not authorized to discuss those matters, but he said AB would welcome a good-offices invitation to both parties from the Minister of Industry to sit down to discuss options for resolving the case.

16. (C) According to Cintron, events unfolded as follows:

December 2003: following rival brewer SAB-Miller's purchase of CH, AB decided to cancel CH's contract to act as Honduran distributor of AB products. CH appealed for an extension through the holiday season to allow for liquidation of existing stocks. AB agreed to this extension.

February 2004: AB formally notified CH of the termination of the contract.

March 9, 2004: CH acknowledged in writing the cancellation of the contract.

March 14, 2004: CH requested from the GOH Ministry of Trade and Commerce (SIC) a license as sole distributor of AB

products.

July 2004: SIC formally rejected CH request for license, allegedly citing CH's inability to produce a valid contract with AB.

September 2004: A Supreme Court Magistrate (NFI), acting in his/her capacity as a notary public, certified that CH does have a contract with AB. Using this certification, CH reportedly again requested and was granted a distribution license from SIC. AB's local lawyers have reportedly expressed concerns that this series of events may have involved "improper influence."

December 7, 2004: Based on the license and alleged contract, CH filed suit against AB for breach of contract. Using the legally stipulated formula, they calculated damages as average gross profits of the previous five years, or approximately USD 5.5 million.

April 2005: AB formally notified of suit and given until July to respond.

July 2005: AB responded, claiming that the contract had been canceled, therefore no breach was possible nor was the issuance of the license in question valid. CH countered with its own version of the facts at issue. The case was remanded to civil court in San Pedro Sula, where it is currently pending the establishment of a date for decision.

17. (SBU) This is not the first high-profile case involving monopolistic Cerveceria Hondurena this year. CH, a subsidiary of South African Breweries-Miller Brewing, is the defendant in a trademarks violation case brought against them by a now-defunct Honduran liquor distiller (Ref A). CH maintains a de facto monopoly on beer production and distribution in Honduras and markets one of its four popular national beers under the name 'Bahia.' According to sources, the trademark name 'Bahia' was sold to a third party several years ago as a wine cooler name. That third party is now bringing suit against CH. The trademark Bahia name was originally registered as a wine cooler, rather than a beer. CH believes that the product they sell is distinct from the product formerly registered as 'Bahia.'

18. (C) Comment: Post will follow the case with interest, and advocate for a just, timely, and transparent resolution while being careful not to appear to be pressing for a particular verdict. Post will also approach Minister of Industry Irving Guerrero to suggest he convoke the two parties to the dispute in an effort to resolve the case before incurring major legal expenses. End Comment.

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